

## Internal Revenue Service

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## LEGEND

Distributing =

Controlled =

State A =

Business B =

Retained  
Business =

Joint Venture =

Distributing  
Debt =

Controlled  
Securities =

c percent =

d =

Date 1 =

E-month =

Dear \_\_\_\_\_ :

This letter responds to your letter dated January 13, 2015, as supplemented on February 27, 2015, April 17, 2015, May 22, 2015, June 12, 2015, and June 24, 2015, requesting rulings under sections 355, 357, and 361 of the Internal Revenue Code and related regulations with respect to the proposed transaction described below (the "Proposed Transaction"). The information submitted is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, regarding one or more significant issues under sections 332, 351, 355, 368, or 1036. The rulings contained in this letter only address one or more discrete legal issues involved in the Proposed Transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

### FACTS

Distributing, a publicly traded State A corporation, is the parent of a worldwide group which includes both domestic and foreign entities (the "Distributing Worldwide Group"), and is also the common parent of an affiliated group of corporations that join in filing a consolidated U.S. federal income tax return (the "Distributing Consolidated Group"). The Distributing Worldwide Group conducts Business B and the Retained Businesses.

Distributing has outstanding a widely held single class of common stock, and shares of preferred stock. Distributing has outstanding indebtedness, which includes among others, Distributing Debt. In connection with the Proposed Transaction, Distributing formed Controlled as a State A corporation, with a single class of common stock.

Combination Partner is a U.S. corporation unrelated to any member of the Distributing Worldwide Group. Combination Partner conducts businesses that are complementary to Business B. In connection with the Proposed Transaction, Combination Partner formed a subsidiary ("Combination Partner Sub") as a U.S. corporation.

On Date 1, Distributing, Controlled, Combination Partner, and Combination Partner Sub entered into a merger agreement, agreeing to undertake certain transactions described in further detail below ("Merger Agreement"). Also on Date 1, Distributing, Controlled, Combination Partner, and Combination Partner Sub entered into an Employee Matters Agreement and a Tax Matters Agreement.

## PROPOSED TRANSACTION

For what are represented as valid business purposes, the parties propose to undertake the following Proposed Transaction steps, pursuant to an overall plan and in the order set forth below:

- (i) In order to align Business B to facilitate the Proposed Transaction, Distributing will cause Business B to be separated from the Retained Businesses in foreign jurisdictions and in the U.S. in taxable and tax-free transactions, and certain of the assets related to Business B will be distributed to Distributing in a series of distributions of interests in foreign and domestic entities.
- (ii) Subject to market conditions existing at the time of the Proposed Transaction, one or more financial institutions (collectively, the "Financial Institutions") will acquire Distributing Debt. The Financial Institutions may enter into hedging arrangements (interest and/or credit risk) with respect to Distributing Debt; neither Distributing nor Combination Partner, nor any member of their respective affiliated groups, will be a party to such arrangements.

Financial Institutions and Distributing will enter into an exchange agreement (the "Securities Exchange Agreement") at least five days after the Financial Institutions acquires Distributing Debt pursuant to which the Financial Institutions will exchange an amount of Distributing Debt for the Controlled Securities received by Distributing in the Contribution as described in step (iii) (the "Securities Exchange"). The pricing for the Securities Exchange will be a fixed ratio determined on the date the Securities Exchange Agreement is entered into based on the market price for the Controlled Securities and the Distributing Debt on that date. The Securities Exchange will then occur at least 14 days after the acquisition of Distributing Debt by the Financial Institutions. If the Securities Exchange Agreement is entered into, it is also expected that an underwriting agreement with the Financial Institutions will be entered into at the same time, pursuant to which there will be an offering of the Controlled Securities to investors.

- (iii) Distributing will contribute the assets and entities related to Business B to Controlled in exchange for: (i) additional shares of Controlled stock, (ii) the assumption of liabilities related to Business B, if any, (iii) cash that Controlled will have borrowed from an unrelated financial institution simultaneously with the

contribution (the “Cash Distribution”), and (iv) Controlled Securities, collectively (the “Contribution”). Distributing liabilities which will be deductible or capitalized into the basis of assets when paid or incurred, may be assumed by Controlled in the Contribution (the “Distributing Deductible Liabilities”). Included in the Contribution is the Joint Venture partner’s complete interest purchased by Distributing pursuant to the terms contained in the Joint Venture agreement.

In the event that Distributing determines that the Securities Exchange is not reasonably likely to be consummated at the time of the Distribution described in step (iv), in lieu of Controlled Securities being issued in the Contribution, Controlled may borrow an additional amount of cash to be distributed to Distributing (the “Additional Cash Distribution”). Distributing will retain an amount of the Additional Cash Distribution to the extent the sum of the Cash Distribution and the Additional Cash Distribution exceeds Distributing’s aggregate tax basis in the assets and stock transferred to Controlled in the Contribution, reduced by the aggregate amount of liabilities assumed (excluding Distributing Deductible Liabilities) by Controlled in the Contribution. Accordingly, Distributing may recognize some gain on the Additional Cash Distribution under section 368(b)(1)(B).

(iv) Distributing will offer its common shareholders the right to exchange Distributing common stock for a specified number of shares of Controlled stock (the “Exchange Offer”). If the Exchange Offer is not fully subscribed, Distributing will distribute the remaining Controlled shares pro rata to its shareholders. (The Exchange Offer and any pro rata distribution are, together, the “Distribution”).

Distributing will effectuate the Distribution by delivering a certificate representing the shares of Controlled entitled to be received by Distributing shareholders in the Distribution to an exchange agent. The exchange agent will exchange the certificate for Combination Partner shares at the effective time of the Combination described in step (v) and distribute the Combination Partner shares to the Distributing shareholders entitled to receive Controlled shares. Such shareholders will have no right to receive Controlled shares.

(v) Pursuant to the Merger Agreement, immediately after the Distribution Combination Partner Sub will merge with and into Controlled, with Controlled surviving, in a transaction intended to qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(E) (the “Combination”).

Pursuant to the Combination, in order to avoid the expense and inconvenience of issuing fractional shares, Combination Partner will deliver shares to the exchange agent on behalf of the Controlled shareholders representing the aggregate of the fractional shares to which they are entitled, and the exchange agent will sell the shares in an open market transaction and remit the cash proceeds to the shareholders.

Pursuant to the Merger Agreement, ignoring cash received in lieu of fractional shares, the shareholders of Controlled will receive d shares of common stock of Combination Partner which, in the aggregate, will represent c percent of the total voting power, and total combined value of Combination Partner's issued and outstanding stock.

(vi) Pursuant to the Employee Matters Agreement and effective on the date of the Combination, Controlled will become a participating employer under an existing Combination Partner pension plan, and provided that Distributing has made a timely election: (i) liabilities in respect of benefits accrued by various individuals currently or formerly employed in Distributing's Business B will be shifted from the Distributing pension plan directly to the Combination Partner pension plan; and (ii) assets associated with those liabilities will be transferred from the Distributing Pension Plan directly to the Combination Partner Pension Plan. If the amount of the net pension liability transferred is less than an agreed-upon amount, Combination Partner will make a cash payment to Distributing. To the extent a cash payment is received, Distributing will treat an amount of Controlled stock with a value equal to the amount of such cash payment as having been sold by Distributing to Combination Partner in a section 1001(a) sale or exchange for such cash payment contemporaneously with the Distribution.

(vii) During the E-month period following the Distribution, Distributing will use an amount of cash equal to, or greater than, the Cash Distribution (a) to make distributions to its shareholders (which distributions could include regular quarterly dividends to its shareholders); (b) to repurchase shares of its outstanding common stock (which repurchases could be made pursuant to its existing stock repurchase plans); (c) to pay its liabilities, whenever incurred (which payment could include bank debt, public debt, interest and associated fees (such as consent fees) and ordinary course liabilities); or (d) a combination of (a)–(c). Distributing anticipates that, pending the distribution of an amount of cash equal to the Cash Distribution to shareholders and/or creditors, the proceeds from the Cash Distribution will be invested and/or otherwise used. Distributing will not set aside or otherwise segregate the Cash Distribution.

Following the Proposed Transaction, Controlled anticipates being in the position to increase its capacity and grow its customer base beyond Distributing. However, Controlled will maintain significant simultaneous business relationships with Distributing as a customer, supplier, service provider, and service recipient. In addition, certain shared manufacturing sites will be retained by Distributing, but many of these sites will continue to be used by Controlled. The contracts for these continuing commercial relationships are expected to be in place for an undetermined long-term period, and will contain terms that are intended to reflect fair market rates, determined based on (i) existing Distributing agreements with third parties that are similar in scale, (ii) application of a reasonable markup on

cost, and/or (iii) application of market indices where available, all arrived at by the parties bargaining at arm's length. The contracts will include specifics for decision-making and strategy to ensure that the needs of both users are met while simultaneously balancing byproducts, co-products, and waste products. As part of the separation of the two businesses, it is also anticipated that certain services and functions will be provided by Distributing to Controlled, on a transitional basis, with the possibility for longer-term extensions executed pursuant to pricing determined on a cost-plus basis. (Together, the commercial and transition services arrangements are the "Continuing Arrangements").

## REPRESENTATIONS

- a. The aggregate amount of liabilities assumed (excluding Distributing Deductible Liabilities) and the Cash Distribution will not exceed Distributing's aggregate tax basis in the assets transferred to Controlled in the Contribution in step (iii).
- b. Any Distributing debt exchanged for Controlled Securities pursuant to the Securities Exchange was not incurred in anticipation of the Distribution.
- c. The Controlled Securities will qualify as securities for purposes of the application of Section 361(a).
- d. The incurrence of the Distributing Deductible Liabilities assumed by Controlled, if any, did not result in the creation of, or increase in, basis of any assets of Distributing or Controlled or the stock of Distributing or Controlled.
- e. The Distributing Deductible Liabilities are liabilities accrued by Distributing for financial accounting purposes, but will not meet the timing requirements for a deduction by Distributing before the Contribution under Distributing's method of tax accounting. The Distributing Deductible Liabilities will meet the timing requirements for a deduction by Controlled after the Contribution under Controlled's method of tax accounting.
- f. The amount of cash received by Distributing from Combination Partner in step (vi) will be less than 20 percent of the aggregate value of the Controlled stock.
- g. Distributing will recognize gain on any retained Additional Cash Distribution pursuant to section 368(b)(1)(B).

### RULINGS

1. The Cash Distribution in step (iii) will be treated as being distributed pursuant to the Controlled plan of reorganization for purposes of sections 361(b)(1)(A) and 361(b)(3).
2. The Securities Exchange will be treated as being distributed pursuant to the Controlled reorganization for purposes of section 361(c).
3. The Distributing Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing assumed by Controlled for purposes of Sections 357(c), 358(d), and 361(b)(3).
4. The receipt of Combination Partner shares by a Distributing shareholder will be treated for federal income tax purposes as if the Distributing shareholder received Controlled shares in the Distribution and exchanged such Controlled shares for Combination Partner shares in the Combination.
5. The receipt of cash by a Controlled shareholder in lieu of a fractional share of Combination Partner stock in step (v) will be treated for federal income tax purposes as if the fractional share had been distributed to the Controlled shareholder as part of the Combination and then had been disposed of by the Controlled shareholder for the amount of cash in a section 1001(a) sale or exchange.
6. For purposes of section 355(e), the sale of fractional shares in the market will not be treated as acquisitions that are part of the plan that includes the Distribution.

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Proposed Transaction that is not specifically covered by the above rulings.

### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Isaac W. Zimbalist  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: